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No. 84-294

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ENVIROTECH CORPORATION
AND
ENERGY FUELS NUCLEAR, INC.,

Petitioners,

v.

AMSTAR CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT

PETITIONERS' REPLY MEMORANDUM

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October 8, 1984

AMENDED STATEMENT PURSUANT TO RULE 28.1

Due to the significance of organizational changes to the affiliates of Petitioner Envirotech Corporation since the filing of the Petition for Writ of Certiorari in this matter, convenience requires that the Statement Pursuant to Rule 28.1 be restated at this time.

1. Petitioner Envirotech Corporation (Envirotech) is a wholly-owned subsidiary of Baker International Corporation.

Envirotech's subsidiaries, other than wholly-owned, are as follows:

Eimco Elecon (India) Ltd. (India)
Eimco S.A. (Chile)
Eimco Sudamerica, Inc. (Panama)
Mitsui Zosen Eimco, Inc. (Japan)
Sumitomo Jukikai Envirotech, Inc. (Japan)
Esmil-EVT (Netherlands)

Envirotech's affiliates are the other subsidiaries of Baker International Corporation as well as their subsidiaries, namely:

Baker Mining Equipment Company (California)
Baker Mine Services, Inc. (West Virginia)
Baker Technology S.A. (Panama)
BKO (Singapore) Pte. Ltd. (Singapore)
Chas. S. Lewis and Co., Inc. (Missouri)
The Galigher Company (Utah)
Galigher Ash Canada, Ltd. (Canada)
Galigher International, Inc. (Utah)
Galigher Ash (Australia) Pty. Limited (Australia)
Galigher Pacific Pty. Ltd. (Australia)
Gault Tool Company, Inc. (Oklahoma)
Ingenieria Ramsey Mexicana, S.A. (Mexico)
Lewis Pump International, Inc. (Missouri)
GLI Corporation (Washington), and its subsidiary:
Grad-Line Export, Inc. (Washington)

Baker International (Canada) Ltd. (Canada), and its subsidiaries:

Gruner Bit Company Ltd. (Canada)

Portable Electric Tools, Ltd. (Canada)

Baker International Energy, Inc. (California), and its subsidiaries:

Baker International Finance N.V. (Netherlands Antilles)

D.W. Zimmerman Mfg. Inc. (Ohio), and its subsidiary:

ZIMDISC (California)

Reedrill, Inc. (Texas), and its subsidiary:

Reedrill DISC, Inc. (California)

Reed Mining Tools, Inc. (Texas), and its subsidiaries:

Reed Mining Tools DISC, Inc. (Delaware)

Reed Mining Tools South Africa Pty. Ltd. (South Africa)

Baker Drilling Equipment Company (California), and its subsidiaries:

Baker Tubular Services, Inc. (Delaware), and its subsidiaries:

Coating Services International, Inc. (Texas)

Plastic Applicators, Inc. (Texas)

Zap-Lok Systems International, Inc. (Texas)

Process Tool Company (Texas)

United States Consultants, Inc. (Nevada), and its subsidiaries:

United States Consultants Limited (Hong Kong)

United States Consultants Pty. Limited (Australia)

PA Incorporated (Delaware), and its subsidiaries:

The Ralph Lowe Company (Texas)

PA International Disc, Inc. (Texas)

PA-Teijin Co. Ltd. (Japan)

Reed Tubular Products Company (Texas), and its subsidiaries:

Reed Tubular Sales, Inc. (Delaware)

Reed Nippon Corporation (Japan)

Baker Tubular Services International, Inc. (Delaware), and its subsidiaries:

PA International, Inc. (Panama)

Pai Malaysia Sdn. Bhd. (Malaysia)

Exploration Logging, Inc. (California), and its subsidiaries:

Exploration Logging Arabian Gulf Ltd. (Jersey)

Exploration Logging, B.V. (Netherlands)

Exploration Logging do Brasil Equipamentos, Ltda. (Brazil)

Exploration Logging Espanola S.A. (Spain)

Exploration Logging International, Inc. (Panama)

Exploration Logging (Ireland) Ltd. (Ireland)

Exploration Logging (Malaysia) Sdn. Bhd. (Malaysia)

Exploration Logging Norge A/S (Norway)

Exploration Logging of Australia, Inc. (Nevada)

Exploration Logging of Japan, Inc. (Nevada)

Exploration Logging of U.S.A., Inc. (California)

Exploration Logging of U.S.A. Central, Inc. (Colorado)

Exploration Logging of U.S.A. East, Inc. (Nevada)

Exploration Logging Overseas, Inc. (Panama)

Exploration Logging S.A. (Nevada)

Exploration Logging (Singapore) PTE. Ltd. (Singapore)

R.F. Smith Corporation (California)

Exploration Logging Production Services S.A. (Switzerland)

Exploration Logging (N.S.) Company S.A. (Switzerland), and its subsidiary:

Exploration Logging North Sea Limited (United Kingdom)

Lynes, Inc. (Texas), and its subsidiaries:

Lynes DISC, Inc. (Texas)

Lynes do Brazil Limitada (Brazil)

Lynes International, Inc. (Nevada), and its subsidiaries:

Lynes Caribbean, Inc. (Nevada)

Lynes International G.m.b.H. (Germany)

Lynes International Sea PTE. Ltd. (Singapore)
Lynes International Services, Inc. (Panama)
Lynes Petrotech (Norge) A/S (Norway)
Milchem Incorporated (Delaware), and its subsidiaries:
Fluidos Perforacion Milchem Guatemala S.A. (Guatemala)
Milchem Cameroun s.a.r.l. (Cameroon)
Milchem de Venezuela, S.A. (Venezuela)
Milchem DISC, Inc. (Delaware)
Milchem Services Limited (Ireland)
Milchem Western Hemisphere, Incorporated (Delaware)
Mil-Reed Incorporated (Texas)
Milwhite Mud Sales Company (Delaware)
Productos Industriales Mineros S.A. (Prima) (Columbia)
Drilling Fluids Incorporated (Delaware), and its subsidiary:
Geofluids Pty. Limited (Australia)
Milchem International Limited (Bahamas), and its subsidiaries:
Milchem Libya Co. Ltd. (Libya)
Milchem International (Nigeria) Ltd. (Nigeria)
P. T. Milchem Indonesia (Indonesia)
Milchem Nederland B.V. (Netherlands), and its subsidiaries:
Milchem Minerals Limited (Ireland), and its subsidiary:
Societe Anonyme de Broyage Minerai du Cameroon (Cameroon)
Milchem France s.a.r.l. (France), and its subsidiary:
Milchem Gabon s.a.r.l. (Gabon)
Milchem Venezuela Corporation (Delaware), and its subsidiaries:
Milafon Venezolana C.A. (Venezuela)
TOTCO de Venezuela C.A. (Venezuela)
Reed Tool Company (Delaware), and its subsidiaries:
Murphy Eastern Pty. Limited (Australia)

Reed Rock Bit do Brasil Industria de Equipamentos de Perfuracao Ltd. (Brazil)
Reed Roller Bit Company (Texas)
Reed Tool Company of Australia Pty. Ltd. (Australia)
Reed World Sales, Inc. (Delaware)
Reed World Trade Corporation (Texas)
Trepanos IMET S.A.I. Metalurgicals (Chile)
Baker International (Nederland) B.V. (Netherlands), and its subsidiary:
  Exploration Logging Italia Srl. (Italy)
Reed Tool Company (Texas), and its subsidiaries:
  Reed Rock Bit Co. de Chile Limitada (Chile)
  Reed Tool Company International (Texas)
Reed Tool Company International Ltd. (Bermuda), and its subsidiary:
  Reed Rock Bit Co. International Ltd. (Bermuda)
American Coldset Corporation (Texas), and its subsidiaries:
  ACC, S.A. de C.V. (Mexico)
  American Coldset Corporation, Ltd. (Delaware)
  American Coldset Holdings, Inc. (Delaware), and its subsidiary:
    Reed Tool Company (Australia) Pty. Ltd. (Australia)
  American Coldset International Corp. (Delaware)
  ACC Diamond Products (Singapore) Private Limited (Singapore)
  ACC Diamond Products de Venezuela C.A. (Venezuela)
Technical Oil Tool Corporation (Oklahoma), and its subsidiaries:
  Visulogger, Inc. (Oklahoma)
  TOTCO Asia Pacific, Inc. (Oklahoma)
  TOTCO International Corporation (Oklahoma)
  TOTCO Operating Corporation (Oklahoma), and its subsidiary:
    TOTCO DISC, Inc. (California)

Tri-State Oil Tools Industries, Inc. (California), and its subsidiaries:

Back-Off Specialists, Inc. (Delaware)
Intercontinental Energy Services, Inc. (Delaware)
Oil-Well Drilling Control, Inc. (Louisiana)
Technical Management (South Pacific) Inc. (Delaware)
Tri-State International, Inc. (Delaware)
Tri-State Oil Tool & Supply, Inc. (Delaware)
Tri-State Oil Tool (Egypt) S.A. (Panama)
Tri-State Oil Tool GmbH (Germany)
Tri-State Oil Tool (H.K.) Ltd. (Hong Kong)
Tri-State Oil Tool (Latin America), Inc., (Delaware)
Tri-State Oil Tool (M) Sdn. Bhd. (Malaysia)
Tri-State Oil Tool (Malaysia), Inc. (California)
Tri-State Oil Tool (Middle East) Ltd. (Cayman Islands)
Tri-State Oil Tool (Norway), Inc. (Delaware)
Tri-State Oil Tool S.A. (Panama)
Tri-State Oil Tool (Saudi Arabia), Ltd. (Cayman Islands)
Tri-State Oil Tool (Singapore) Pte. Ltd. (Singapore)
Tri-State Oil Tool (Thailand) Ltd. (Cayman Islands)
Tri-State Oil Tool (U.A.E.) Ltd. (Cayman Islands)

Baker Holding (U.S.), Inc. (Nevada), and its subsidiaries:

Tri-State Oil Tool (I.O.M.) Ltd. (Isle of Man)
Baker International Ltd. (United Kingdom), and its subsidiaries:

Baker CAC, Ltd. (United Kingdom)
Baker Equipment Leasing Ltd. (United Kingdom)
Baker Leasing Ltd. (United Kingdom)
Bakerline (U.K.) Ltd. (United Kingdom)
Baker Oil Tools (U.K.) Ltd. (United Kingdom)
Baker Production Services (U.K.) Ltd. (United Kingdom)
Baker Sand Control (U.K.) Ltd. (United Kingdom)
Milchem Drilling Fluids Ltd. (United Kingdom)

Baker Tubular Services (U.K.) Ltd. (United Kingdom)
Ramsey Process Controls Ltd. (United Kingdom)
Reed Mining Tools Limited (United Kingdom)
SEACO Sales & Services (North Sea) Limited (United Kingdom)
ACC Diamond Products U.K. Limited (Scotland)
ACS Secretarial and Invoicing Services Limited (England)
Tulloch Engineering Limited (United Kingdom)
Lombard Baker Leasing Company (United Kingdom)
TOTCO (U.K.) Ltd. (United Kingdom)
Tri-State Oil Tool (U.K.) Ltd. (United Kingdom)
Lynes Petrotech Ltd. (United Kingdom)
Exploration Logging (U.K.) Ltd. (Scotland), and its subsidiary:
Exploration Logging (Services) Ltd. (United Kingdom)
Magnachem Limited (United Kingdom), and its subsidiary:
Technical Chemical Mfg. Co. (United Kingdom)

Baker Oil Tools, Inc. (California), and its subsidiaries:
Baker Far East Ltd. (Bermuda)
Baker International Cote D'Ivoire s.a.r.l. (Ivory Coast)
Bakerline Far East, Inc. (Delaware)
Bakerline Services Ltd. (Cayman Islands)
Baker Nigeria Ltd. (Nigeria)
Baker North Slope Wireline Service Company (Alaska)
Baker Oil Tool (Australia) Pty. (Australia)
Baker Oil Tools (Espana) S.A. (Spain)
Baker Oil Tools (Far East) Pte. Ltd. (Singapore)
Baker Oil Tools G.m.b.H. (Germany)
Baker Oil Tools (H.K.) Ltd. (Hong Kong)
Baker Oil Tools (Italia) SRL (Italy)
Baker Oil Tools (Nederland) B.V. (Netherlands)
Baker Oil Tools Norway, A/S (Norway)

Baker Packers of Canada, Inc. (Canada)
Baker Production Services (Australia) Pty. Ltd. (Australia)
Baker Production Services, Inc. (Texas)
Baker Production Services (Norway) A/S (Norway)
Baker Production Services Pte. Ltd. (Singapore)
Baker Sand Control (Brunei) Ltd. (Brunei)
Baker Sand Control Cameroun s.a.r.l. (Cameroon)
Baker Sand Control (Canada) Ltd. (Canada)
Baker Sand Control Gabon s.a.r.l. (Gabon)
Baker Sand Control Italia SRL (Italy)
Baker Sand Control (Canada) Ltd. (Canada)
Baker Sand Control Bruneison Bhd. (Brunei)
Baker-Disc, Inc. (Texas)
Baker Sand Control Italia (Manufacturing) SRL (Italy)
Baker Sand Control Ltd. (Bermuda)
Baker Sand Control Services Tecnicos, Ltda. (Brazil)
Baker Transworld, Inc. y Compania Limitada (Chile)
Baker Well Services International Ltd. (Bermuda)
Baker Tools, Inc. (Louisiana)
P.T. Baker Indonesia (Indonesia)
Reed-American Prolift, Inc. (Texas)
Services Petrolier Baker S.A. (France)
Societe d'Etudes Petroliers (France)
Trans Tool Sdn. Bhd. (Malaysia)
Kobe do Brazil Limitada (Brazil)
Kobe International, Inc. (California)
Kobe Pumps Ltd. (Canada)
Kobe WHTC (California)
Kobe Worldwide, Inc. (California)
Kobe International Sales & Service (California), and its subsidiary:

Kobe Argentina S.A. (Argentina)

Reed-American Products Company (Texas), and its subsidiaries:

Reed-American International Ltd. (Cayman Islands)

Reed-American Sales, Inc. (Delaware)
Baker CAC, Inc. (Louisiana), and its subsidiaries:
Baker CAC International Ltd. (Cayman Islands)
Pneu-Hydro Products, Inc. (Delaware)
CAC International, Inc. (Louisiana)
CAC International Sales Corporation (Louisiana)
CAC Investments, Inc. (Louisiana)
Baker Eastern S.A. (Panama), and its subsidiary:
Baker Middle East Development Co. s.a.r.l. (Lebanon)
Baker International S.A. (France), and its subsidiaries:
Baker International Cameroon (Cameroon)
Baker International Congo s.a.r.l. (Congo)
Baker International Gabon s.a.r.l. (Gabon)
Baker Production Services Ltd. (Bermuda), and its subsidiary:
Baker Mira Saudi Arabia Limited (Saudi Arabia)
Baker Transworld, Inc. (California), and its subsidiaries:
Bakerline Canada, Ltd. (Canada)
Baker do Brasil Equipamentos Ltda. (Brazil)
Baker Service Tools Canada Ltd. (Canada)
Magna Corporation (California), and its subsidiaries:
Baker Oil Treating (SEA) Pte. Ltd. (Singapore)
Magnachem B.V. (Netherlands)
Magnachem G.m.b.H. (Germany)
Magnachem Limited (Canada)
Magna International Ltd. (Bermuda)
Magna Pty. (California)
Servicios Y Herramientas Petroleras S.A. de C.V. (Mexico), and its subsidiary:
Herramientas Interamericanas S.A. de C.V. (Mexico), and its subsidiary:
Bakerline de Mexico S.A. de C.V. (Mexico)
Ramsey Engineering Company (California), and its subsidiaries:
Texas Nuclear Corporation (Texas)
Ramsey Engineering B.V. (Holland)

Ramsey Engineering G.m.b.H. (Germany)
Ramsey Engineering Trading Co. (Minnesota)
Ramsey Ingenieros S.A. (Spain)
Ramsey Italia SRL (Italy)
Ramsey Engineering Africa Pty. Ltd. (South Africa), and its subsidiary:
Texas Nuclear (S.A.) (Pty) Ltd. (South Africa)
Ramsey REC Ltd. (Canada), and its subsidiary:
Ramsey Comercio Industria Ltda. (Brazil)
Ramsey Engineering Controls Pty. Ltd. (Australia)

2. No amendment to the Statement Pursuant to Rule 28.1 for Petitioner Energy Fuels Nuclear, Inc. is required.

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No. 84-294

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ENVIROTECH CORPORATION
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Petitioners,

v.

AMSTAR CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
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PETITIONERS' REPLY MEMORANDUM

Respondent Amstar makes three principal arguments in opposition to the petition for writ of certiorari. It argues that the Federal Circuit properly disregarded the Trial Court's fact findings (A-65 & n.55) because the Trial Court made errors of law; that the Trial Court's statements are not actually fact findings at all; and that remand is not necessary because infringement is clear on this record. The linchpin of each of the three arguments is Amstar's assertion that the record is unequivocal on the issue of infringement: Even if there were legal errors implicating the fact findings and even if there were no fact findings made, remand is clearly required unless the record compels a conclusion of infringement. We deal with each of Amstar's arguments

seriatim, pausing only to consider at the onset two pervasive misstatements in Amstar's brief.[1]

First, Amstar repeatedly implies that the focus of the case should be on whether the original rather than the modified Envirotech equipment infringed the Eis patent. The District Court implicitly found infringement by the original equipment but concluded that it caused "no cognizable injury" to Amstar (A-66); the Court of Appeals did not disturb this conclusion. Only the Court of Appeals' holding with regard to the modified equipment is therefore questioned by the petition. Amstar's references to evidence that the original equipment infringed, including principally Amstar's trial claim charts (PX 32), are simply irrelevant. *See* Respondent's Brief at 13.

Second, Amstar argues that even if the District Court found that the modified Envirotech equipment did not infringe claim 9 because the rotating disc was not the equivalent of the baffle means, claims 1 and 8 are nonetheless infringed. To support this thesis, Amstar necessarily indicates that some other component of the modified Envirotech equipment arrests and outwardly displaces the incoming slurry. Respondent's Brief at 2. However, at trial, Amstar's claim and evidence of infringement of claims 1, 8, and 9, on which it had the burden of proof, was based solely on the allegation that the rotating disc (also sometimes called the base plate) of the modified Envirotech equipment arrests and outwardly displaces the incoming slurry.[2] It has never argued that any other element of the modified Envirotech equipment performs this process step (and indeed no other element does). Instead, Amstar argued that the rotating disc was the equivalent

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[1] Amstar's argument that the issues presented by Petitioners were not presented to the Court of Appeals is adequately answered in the Petition at 14.

[2] See the testimony of Amstar's expert witness, Dr. David Spottiswood (Tr. 254-56, 259-61), and Amstar's final argument at trial (Tr. 1100-03).

of the claim 9 baffle means *because* it arrests and outwardly displaces the incoming slurry. *See* Plaintiff-Appellant's Appeal Brief at 43-44 (A-114). Thus the finding by the Trial Court that the "function of the base plate is arguably dissimilar to the Eis baffle" (A-65 n.55) is a finding that the base plate is not the equivalent of the baffle means because the base plate does not arrest and outwardly displace the incoming slurry. Since the base plate does not arrest or outwardly displace the incoming slurry, and since Amstar did not allege that any other element of the modified Envirotech equipment did so, this finding by the District Court compels the conclusion that no component of the modified Envirotech equipment arrests and outwardly displaces the incoming slurry. Thus, the modified Envirotech equipment does not infringe process claims 1 and 8.

1. *The Federal Circuit Was Not Justified in Disregarding Trial Court Findings Due to Errors of Law.*

Amstar's argument that the Federal Circuit was justified in disregarding the Trial Court's findings because of legal errors founders on its inability to demonstrate any connection whatsoever between the legal errors found by the appellate court and the fact findings at issue. *See* Respondent's Brief at 12-13; Petition at 14-15. Where the erroneous application of legal principles does not affect the findings, they must be affirmed if not clearly erroneous. *See Pullman-Standard* v. *Swint*, 456 U.S. 273, 291-92 (1982). Further, characterizing infringement as a mixed question of law and fact merely obfuscates the fact issues actually involved here: under the apparatus claim, whether a baffle or its equivalent was included in the Envirotech device and, under the process claims, whether that device performed an "arresting and displacing" step. These issues, as the Federal Circuit here recognized, are issues of fact: "literal infringement of a properly interpreted claim is a fact question . . . ." *Amstar* v. *Envirotech Corp.*, 730 F.2d 1476, 1481 (CA Fed. 1984) (A-8). *See also Graver Tank & Manufacturing. Co.* v. *Linde Air*

Products Co., 339 U.S. 605, 609 (1950) ("A finding of equivalence is a determination of fact.").

2. *The Trial Court's Findings Were Not Limited as Amstar Contends.*

Amstar asserts that the Trial Court's statements regarding the absence of a baffle or its equivalent are not findings as characterized by Petitioners, arguing in part that the Court found only the absence of a *flat* baffle plate and not the absence of any baffle plate or its equivalent in the modified Envirotech equipment. Respondent's Brief at 2, 3, 12. In fact, it is apparent that the term "flat" was merely a shorthand reference to the claim language of a "unitary substantially horizontal baffle." The District Court's full statement, and the testimony it cited,[3] unequivocally show that the Court referred to the function of the rotating disc in the modified Envirotech equipment as an alleged baffle plate, rather than to its flatness.

Further, even had the District Court made no finding on point, Amstar could not prevail: In that instance deference to the District Court's fact-finding function[4] still requires a remand rather than the erroneous *de novo* findings adopted by the Federal Circuit here. *Pullman-Standard* v. *Swint*, 456 U.S. 273, 292 (1982).

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[3] Nowhere in the testimony cited by the District Court (Tr. 864-75) does the word "flat," in any form, appear. Instead, the testimony deals primarily with the configuration of various models of Envirotech equipment and the absence of the arresting function in the various Envirotech models.

[4] Amstar misapprehends Petitioners' argument that the Federal Circuit, or indeed any appellate court, is ill-suited to making fact findings on a disputed record. *See* Respondent's Brief at 5. Petitioners have never questioned the expertise of the Federal Circuit judges, but rely instead on this Court's repeated recognition that the trier of fact "is usually in a superior position to appraise and weigh the evidence." *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 395 U.S. 100, 123 (1969). *See also Inwood Labs., Inc.* v. *Ives Labs., Inc.*, 456 U.S. 844, 857-58 (1982).

3. *There Is Conflicting Evidence on Infringement.*

Amstar's final, and pivotal, argument asserts that the Federal Circuit appropriately concluded that the Envirotech device contained, under the apparatus claim, an equivalent of the Eis baffle, and, under the process claim, an "arresting and displacing" step of the incoming slurry because the record permits only one resolution of these factual issues.[5] Respondent's Brief at 12–14. In fact, there is substantial evidence that the rotating disc does not arrest and outwardly displace the slurry flow, which is sufficient to support a finding of no infringement. This evidence includes the testimony of an expert, Emmett, who had actually measured the flow of fluid in the modified Envirotech apparatus by a technique admitted by Amstar's expert to be reasonable. (Tr. 718, 723, 725-26, 728-49, 822, 849-50, 856-7, 864-75, 879-80, 899, 1046-47, 1089).[6] Amstar admits that Emmett's testimony is "contrary" to that of other witnesses, but attempts to dismiss it as merely "argumentative" and a "refusal to admit the obvious." Respondent's Brief at 3, 14 n.4. Amstar also relies on its claim charts (PX 32) to show that the modified Envirotech equipment also "unequivocally" infringed the Eis patent. Respondent's Brief at 12-13. However, the claim charts were not based on the actual modified equipment but on theoretical models developed without the benefit of measurements and were admittedly drawn "on a somewhat biased basis." (Tr. 290-91). The accuracy of Amstar's charts was strongly disputed by expert testimony, particularly with regard to the position and function

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[5] Amstar's reference to the District Court opinion at A-47 as pointing to a "clear" showing that Envirotech equipment has a substantially horizontal baffle means with blades on one side is strictly conclusory on Amstar's part. Respondent's Brief at 3. The District Court makes *no* reference to a baffle means, much less "clearly" stating that the equipment has a horizontal baffle means with blades.

[6] Amstar's own expert testified to the contrary on a theoretical basis only, without taking actual measurements. (Tr. 291).

of the rotating disc. (Tr. 865-68, 879-80, 890-91).[7] One simply cannot conclude on a fair reading of this record, then, that the record permits only one resolution of the infringement issue.[8]

4. *Conclusion.*

For the reasons stated here and in the Petition for Writ of Certiorari, the Petition should be granted.

Respectfully submitted,

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Envirotech Corporation and
Energy Fuels Nuclear, Inc.

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[7] This testimony not only disputed the relevancy of some of the claim charts (Tr. 865-68), but also is based directly on actual measurements of the accused equipment, in contrast to Amstar's claim charts.

[8] Amstar's argument that the Court of Appeals had before it "the essential material necessary" for a finding of infringement and that the record was "full and complete" is irrelevant. *See* Respondent's Brief at 4, 13. FED. R. CIV. P. 52(a) permits the setting aside of the trial court's factual findings only where they are "clearly erroneous," not where the Court of Appeals merely has the "necessary" evidence to make a contrary finding. Further, the necessity for a remand here is not based on any need to supplement the record, but on the need to defer to the appropriate fact-finder.